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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,547	01/30/2004	Andrew A. Burgess	10759-41	6596

7590 08/13/2007  
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EXAMINER
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MAI, TRI M

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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08/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/768,547

Applicant(s)

BURGESS ET AL.

Examiner

Tri M. Mai

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

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1. Claims 1, 2, 3, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Bradshaw et al. (6161698). Bradshaw teaches a carrier having a body a helmet attached to the body the helmet configured to extend over the top of the heads of the clubs as claimed. With respect to the limitation “adapted to constrain the golf clubs from moving a direction along the longitudinal axis”, it is noted that the limitation does not impart any structure over the structure of Bradshaw. Furthermore, by wrapping the cover tightly as shown in Fig. 12, the clubs are constrained in any direction including the longitudinal direction as claimed.

Regarding claim 2, note that the term “portion” is broad. In the very least there is a lower portion being called a shaft portion, and upper portion called the head as claimed. Furthermore, since either portions are planar either having extending portions in both directions including one perpendicular to the golf bag and one parallel to the golf bag.

Regarding claim 3, note the locking mechanism by hooks and loops 60 and 62.

Regarding claim 4, note sleeve 42.

2. Claims 1, 4-13, and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Rea (3245448). Rea teaches a carrier having a helmet at layer 18, a body with a sleeve at portion 12, and a protective member 26 having two free ends 34 that can overlapped. Note that the term “helmet is broad” and the functional limitation does not impart any structures over the layer 18 in Rea. Furthermore, in the very least, layer 18 can constrain any elongated contents in the longitudinal direction as claimed.

Regarding claim 13, note that each of protective and helmet portion having at least one layer.

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3. Claims 1, 3-13, and 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (4951818). Johnson teaches a body a helmet 8A and the zipper at 56A is the locking assembly.

Regarding claim 4, note the sleeve (the liners at 9, 13, 14A) and the protective member formed by portions 36, 35 and these two free ends overlap at the buckle portion.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Salberg et al. (2471169). Salberg teaches a body 11, a helmet 31 with a locking assembly 32, note that the golf bag and the helmet 29 are integral in one piece as shown in Fig. 2.

5. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Lickton (6039243). Lickton teaches a golf bag carrier having a body a helmet being the cover 38.

Regarding claim 3, note the locking assembly being the drawstring on top of portion 38.

Regarding claim 4, note the rigid sleeve 34 in fig. 14 and the protective member received within the sleeve in Fig. 4 having two buckle ends for overlapping attachment.

6. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Parks (6446851). Parks teaches a carrier having a carrier having a helmet portion layer 7, having a head portion (at 17) and shaft portion (at 18), and a sleeve (portion 30), a protective member 37 having a first free end at 41 and a second free end (the opposite portion in part 10) for overlapping attachment.

Regarding claim 3, note locking elements 24 and 25 (hook and loop fasteners) on the helmet. The term "adjustable" does not impart any structure over the helmet in Parks.

7. Applicant's arguments have been fully considered but they are not persuasive. The amendment does not read over the claims. With respect to the Bradshaw reference, applicant

asserts that Bradshaw does not configured to extend over and engage the top of the heads of the club. The examiner submits that the term “extend” is broad. It denotes any coverage of the cover beyond the clubs. It is submitted that as shown in figs. 6, and 12, the cover extend beyond over the clubs as claimed. Furthermore, it is noted that Fig. 12 clearly shows the cover engage a plurality of clubs. Furthermore, with respect to the recitation “adapted to constrain the clubs from moving in a direction along the longitudinal axis”. The examiner submits that this limitation does not impart any structures over the cover in Bradshaw. Applicant should note that **the claims must be distinguished from the prior art in term of structure rather than function.** In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus claims cover what a device is, not what a device does, Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114. In the very least, it is noted that the attachment means of 62/60 would enable one to tightly engage the clubs and this will constrain the clubs from moving including a direction along the longitudinal axis.

With respect to the Rea reference, applicant asserts that Rea does not describe or suggest a helmet as claimed. It is noted that the claim recites “a helmet attached to the body within said cavity”. As set forth above, portion 18 in Fig. 4 is the helmet as claimed. Portion 18 extend over the golf clubs and constrain the clubs from moving in a direction along the longitudinal axis. Similar to that of applicant’s helmet, portion 18 simply block the movement of golf clubs in any longitudinal direction. With respect to the adaptation of the cavity to contain a golf bag, the examiner submits that it is an intended use recitation. In the very least, the bag in Rea can be adapted to carry a golf bag as claimed. It is noted that golf bag comes in various sizes and note the bags of Hamley (2739631 ) and Worthington (1563816) that can be stored in the device of

Rea. Regarding claim 9, it is noted that there are two free ends (at 34) and these two free ends "can be" overlapped as claimed. Claim 16 is similar to that of claim 1, portion 18 is the helmet as claimed, and at least portion 26 and 28 or even portion 12 circumferentially extend around the golf bag as claimed. It is even noted that portion 12a circumferentially around the golf bag.

With respect to the Johnson reference, Applicant asserts that there is no protective member. The examiner submits that the device at 35 and 36 is the protective member extending partially circumferentially around the golf bag for securing the bag. It is noted that the claim does not restrict the protective member extending at least partially circumferentially around the golf bag. With respect to the constraining the clubs in the longitudinal direction, it is noted that layer 8A, blocks the clubs moving longitudinally. As set forth above, there is no structural difference between applicant's device and portion 8A in Johnson.

Regarding the Salberg device, the examiner submits that the carrier device is portion 10, and the golf bag is portion 29 having a helmet portion 31 for constrain the golf clubs from moving in a direction along the longitudinal axis as claimed.

With respect to Lickton reference, the examiner submits that the sack is the helmet with the drawstring closing at one end would constrain the clubs from moving longitudinally beyond the sack. With respect to a sleeve extending circumferentially around the bag, the examiner submits that portion 42 is the sleeve as claimed, and it extends around the bag. The term "sleeve" does not impart any structure over portion 42 in Lickton at all.

With respect to the Park reference, the examiner submits that the applicant only recites the golf bag as an intended use. The structure of the claimed device does not read over the structure of the device of Park.

Applicant should note that the **claims must be distinguished from the prior art in term of structure rather than function**. In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus claims cover what a device is, not what a device does, Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai  
Primary Examiner  
Art Unit 3781

